



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,668	06/21/2006	Olov Schelen	NET-6465	7842
25962 7590 07/22/2010 SLATER & MATSIL, L.L.P. 17950 PRESTON RD, SUITE 1000 DALLAS, TX 75252-5793				
EXAMINER ZHAO, WEI				
ART UNIT 2475		PAPER NUMBER		
NOTIFICATION DATE 07/22/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@slater-matsil.com  
matsil@slater-matsil.com

### Office Action Summary

**Application No.**

10/583,668

**Applicant(s)**

SCHELEN ET AL.

**Examiner**

WEI ZHAO

**Art Unit**

2475

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory matter.

For claim 9, there are two issues:

a. It is directed to the **software per se** which is non-statutory subject matter. It recites the term "a computer program product for performing the steps" in the beginning of the claim. Claim 9 fails to mention that "a non-transitory computer readable medium" is stored with, encoded with, or embodied with "computer executable instructions" and without these components the functionality of the claimed invention cannot be carried out;

b. Claim 9 claims "computer-readable storage medium". This claim is **transitory signals per se**, since there is no record showing the "computer-readable storage medium" is a non-transitory storage medium either in the claims or in the specification.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-6, 9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klotz et al. (US 2004/0054776) in view of Malomsoky (US 2007/0082645).

For claim 1, Klotz et al. teach the method for controlling a forwarding quality in a data network, the method comprising: the end-to-end measurements providing timing information of traffic flowing between the first node and the second node (paragraph [0038] lines 8-21); obtaining, by a Network Resource Manager (NRM), information of network topology (paragraph [0044] lines 3-9); transferring the obtained information of the network topology from the NRM to the measurement manager or transferring a

result of the performed end-to-end measurements from the measurement manager to the NRM (paragraph [0044] lines 3-9); combining said end-to-end measurements and said obtained information of the network topology into a first information set (paragraph [0044] lines 10-13); and detecting correlated and uncorrelated paths using the first information set (paragraph [0044] lines 10-13).

Klotz et al. teach all the subject matter with the exception of performing, by a measurement manager, end-to-end measurements between a first node in a first access network and a second node in a second access network in said data network. Malomsoky from the same or similar field of endeavor teach implementing fairness of the method, performing, by a measurement manager, end-to-end measurements between a first node in a first access network and a second node in a second access network in said data network (paragraph [0039] lines 1-9). Thus, it would have been obvious to one of ordinary skill in the art to implement the method of Malomsoky in the system of Klotz et al. The method of Klotz et al. can be implemented on any type of the method, performing, by a measurement manager, end-to-end measurements between a first node in a first access network and a second node in a second access network in said data network, which is taught by Malomsoky. The motivation for using the method of Klotz et al. on implementing the method, performing, by a measurement manager, end-to-end measurements between a first node in a first access network and a second node in a second access network in said data network, is to enhance the network controller to track the mobility of users between different networks.

For claim 2, Klotz et al. teach the method, comprising the further step of: combining said first information set with information on data flow presence at individual out-interfaces (paragraph [0044] lines 10-13).

For claim 3, Klotz et al. further teach the method, comprising the further step of: scheduling the transfer of the obtained information of the network topology over time or initiating the transfer of the obtained information of the network topology periodically (paragraph [0038] lines 8-21).

For claim 4, Klotz et al. teach the method, comprising the further step of: scheduling the transfer of the result of the performed end-to-end measurements over time or initiating the transfer of the result of the performed end-to-end measurements periodically (paragraph [0038] lines 8-21).

For claim 5, Klotz et al. teach the method, comprising the further step of: requesting the transfer of the obtained information of the network topology explicitly by a master manager (paragraph [0085] lines 8-16).

For claim 6, Klotz et al. teach the method, comprising the further step of: requesting the transfer of the result of the performed end-to-end measurements explicitly by a master manager (paragraph [0085] lines 8-16).

For claim 9, it is similar to claim 1. Claim 9 is rejected for the same reasons as to claim 1.

For claims 11-14, these four claims are similar to claims 3-6 individually. Claims

11-14 are rejected for the same reasons as to claims 3-6.

6. Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klotz et al. (US 2004/0054776) in view of Malomsoky (US 2007/0082645) as applied to claim 1, and further in view of Laiho (US 2004/0067758).

For claim 7, Klotz et al. and Malomsoky teach all the subject matter with the exception of triggering the transfer of the obtained information of the network topology by specific events in a slave manager. Laiho from the same or similar field of endeavor teach implementing fairness of the method, triggering the transfer of the obtained information of the network topology by specific events in a slave manager (paragraph [0053] lines 52-66). Thus, it would have been obvious to one of ordinary skill in the art to implement the method of Laiho in the system of Klotz et al. and Malomsoky. The method of Klotz et al. and Malomsoky can be implemented on any type of the method, triggering the transfer of the obtained information of the network topology by specific events in a slave manager, which is taught by Laiho. The motivation for using the method of Klotz et al. and Malomsoky on implementing the method, triggering the transfer of the obtained information of the network topology by specific events in a slave manager, is to enhance network optimization in a network management system based on the events occurred.

For claim 8, Klotz et al. and Malomsoky teach all the subject matter with the exception of triggering the transfer of the result of the performed end-to-end

measurements by specific events in a slave manager. Laiho from the same or similar field of endeavor teach implementing fairness of the method, triggering the transfer of the result of the performed end-to-end measurements by specific events in a slave manager (paragraph [0053] lines 52-66). Thus, it would have been obvious to one of ordinary skill in the art to implement the method of Laiho in the system of Klotz et al. and Malomsoky. The method of Klotz et al. and Malomsoky can be implemented on any type of the method, triggering the transfer of the result of the performed end-to-end measurements by specific events in a slave manager, which is taught by Laiho. The motivation for using the method of Klotz et al. and Malomsoky on implementing the method, triggering the transfer of the result of the performed end-to-end measurements by specific events in a slave manager, is to enhance network optimization for a network management system based on the events occurred.

For claims 15 and 16, these two claims are similar to claims 7 and 8 individually. Claims 15 and 16 are rejected for the same reasons as to claims 7 and 8.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rodeheffer et al. (US 6,614,764) is cited to show a method for bridged network topology acquisition.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to WEI ZHAO whose telephone number is (571)270-5672. The examiner can normally be reached on Monday-Thursday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang Ton can be reached on 571-272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wei Zhao  
Examiner  
Art Unit 2475

/W. Z./  
Examiner, Art Unit 2475

/DANG T TON/

Supervisory Patent Examiner, Art Unit 2475/D. T. T./

Application/Control Number: 10/583,668

Page 9

Art Unit: 2475

Supervisory Patent Examiner, Art Unit 2475